

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING/GENERAL MEETING  
November 22, 2005**

Place: Room 206  
Town Hall

TIME: 8:00 PM

**PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:**

Damanti, Conze, Forman, Bigelow, Spain

**STAFF ATTENDING:** Ginsberg, Keating

**COURT RECORDER:** Beler

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At 8:00 P.M., Chairman Damanti read the first two agenda items:

**PUBLIC HEARING**

**Proposed Amendment to Darien Zoning Map, Darien Library Inc., 1421 & 1445 Boston Post Road.** Proposing to rezone the existing parcels from Designed Office & Research 1-acre minimum lot area (DOR-1) and Service Business (SB) to Residential-1/5 acre minimum lot area (R-1/5). The subject properties are on the north side of Boston Post Road, at the northeast corner formed by its intersection with Hecker Avenue, and is shown on Assessor's Map #39 as Lots #13 and #14 in the SB and DOR-1 Zones.

**Proposed Amendments to the Darien Zoning Regulations, Darien Library Inc. 35 Leroy Avenue.** Proposing to amend the Darien Zoning Regulations to create a new zoning district—a Civic Use Zone--a floating zone; and to add a definition of "Zone, Floating" to Section 210 of the Zoning Regulations.

Mr. Damanti said that he would like to take the first two items together. Attorney Bruce Hill was present on behalf of the Darien Library Inc. who submitted both an application to amend the Zoning Map and amendments to the Zoning Regulations. He said that although these are two separate applications there is considerable overlap between the two. The subject property is on the corner of Boston Post Road and Hecker Avenue. A portion of the property is in the Service Business (SB) Zone which is 100 feet deep, parallel to Boston Post Road. The remainder of the parcel is in the DOR-1 Zone. In the SB Zone there is a 25 foot height maximum allowed and in the DOR-1 Zone there is a 28 foot height maximum. The adjacent properties to the west and to the south are in the R-1/5 Zone which requires setbacks and buffers. They propose to re-zone this entire property R-1/5 (Residential).

Conceptual plans are being refined and changed and are already out of date. The general concept is for the new library building to face Boston Post Road with parking in the rear.

An application to amend the Zoning Regulations is to create a new zone, a Civic Use Zone. Mr. Hill explained that most of Darien is developed, and the current height limitations apply to all public buildings. The current Zoning Regulations encourage sprawl by limiting buildings to 2½ stories. The height regulations decrease the area available for parking. Many of the existing

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schools in Town, as well as the Town Hall, are taller than the current Zoning Regulations allow. Mr. Hill noted that under Section 8-2 of the Connecticut General Statutes, the Town of Darien could exempt the Town from all Zoning Regulations but he believes that would be going too far. The proposed zone gives flexibility to the public and non-profit uses in certain circumstances when there is no reasonable expectation of the impact on neighboring properties.

He noted that the proposed floating zone outlines what would basically be a three step process. First, the Commission would determine the criteria of the zone and what is allowed there and create it as a text change in the Zoning Regulations. Second, the Commission should decide where that floating zone could be placed. Third, any Site Plan and/or Special Permit application would need to be submitted for any particular use or type of development. He believed that the establishment of a floating zone is better than a ZBA variance procedure which is easily challenged in court by neighbors. Mr. Ginsberg added that whether the proposed floating zone is applicable to other municipal facilities in Town would be up to the Planning & Zoning Commission to weigh on a case-by-case basis. Mr. Hill explained that whether to re-zone a specific piece of property is a legislative decision and great discretion rests with the Planning & Zoning Commission. He does not envision the YMCA or similar type of not-for-profit organization to qualify under this new zone. He said that such uses are very different than the Library and the Fire Departments which are tax dollar supported. He believes it is very fortunate that these private organizations fulfill a public need in Town. Ms. Forman then asked about the Darien Nature Center and sports fields in Town.

Mr. Damanti then asked about a possible change of use if a large structure is built and then no longer needed for its original intended use. Mr. Bigelow then asked what is eligible for the zone so that it does not get stretched out. Mr. Conze wondered whether the Commission could require that all space established under this zone be used solely for public purposes. Mr. Hill responded that all issues are left up to the Commission to determine. The public's rights are not reduced or infringed upon in any way. He said under the current situation, the Zoning Board of Appeals' hands are tied due to the legal requirement to establish hardship. The floating zone gives more discretion to the Planning & Zoning Commission and can still protect the neighboring property owners. Mr. Hill confirmed that a church is not the same as a volunteer fire company or a library. He believed that language can be adjusted to exclude certain uses and/or clarify who may qualify. Mr. Hill then suggested that the Commission incorporate by reference the materials in the Darien High School application with respect to building size and other regulations from other communities. He and Attorney Wilder Gleason had worked on a proposal to amend the Zoning Regulations at that time.

He said that the Darien Library needs the R-1/5 Zoning Regulation "baseline" and hoped to get the floating zone determination later on. The current proposal before the Commission this evening is to re-zone the subject parcels R-1/5 and create a new floating zone. Later, the Darien Library will apply to have this floating zone "land" on the site and get site plan approval for the actual development. Currently, the Library is a Special Permit use within a residential zone.

Mr. Ginsberg said that the text amendment was referred to the Southwestern Regional Planning Agency (SWRPA) and he read their letter response aloud. Their letter response said that the text amendment may impact other towns depending on where the floating zone lands. Mr. Graham Powell from 71 Hale Lane said that he does not want to see the floating zone land at the existing library site on Leroy Avenue.

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There being no further questions or comments from the general public or Commission members, the public hearing on this matter was closed at 8:55 p.m.

Mr. Damanti then read the next agenda item:

**Special Permit Application #240, C.H. Chyung, 433 Boston Post Road.** Proposal to convert the entire existing second floor space to a dwelling unit. The subject property is located on the northeast side of Boston Post Road, at the northeast corner formed by its intersection with Oberlander Place, and is shown on Assessor's Map #14 as Lot #45 in the DB-2 Zone.

Mr. Chyung explained that the building was approved 28 years ago, and is a two-story office building. He proposes to use the second floor as an apartment for him and his wife. It will include a kitchenette and a shower. The first floor will continue to be used as his office. They expect to use the apartment for several years, and will later convert the apartment back to office use. In response to a question, it was noted that a Zoning Permit will be needed to convert the second floor to an apartment use. Mr. Ginsberg mentioned that the apartment use could then be converted back to an office use without returning to the Planning and Zoning Commission, as a second floor office use is a permitted use by right within the DB-2 Zone.

Mr. John Oberlander of 3 Oberlander Lane then said that he does not see any problem with this proposal. He asked about the building on the west side of Oberlander Lane, which was built within the past five years. Mr. Ginsberg replied that if they wish to convert any second floor space to apartments then they would need to go through the same Special Permit application process as Mr. Chyung.

There being no comments from Commission members, and no further comments from the general public, the public hearing on this matter was then closed.

Mr. Damanti then read the next agenda item:

**Business Site Plan #124-D, Darien-Rowayton Bank, 979 Boston Post Road.** Proposing to establish a bank in the space formerly occupied by Haig Jewelers with a walk-up ATM/night depository on the southerly wall of the building. The subject property is located on the north side of Boston Post Road, approximately 200 feet east of its intersection with Day Street, and is shown on Assessor's Map #73 as Lot #30, CBD Zone.

Attorney Kathryn Pasternak of Rucci Burhnam Carta Carello and Reilly was present on behalf of the bank. She said that this will be a temporary location for the bank, and is the former site of Haig Jewelers. She said that proof of mailing of notifications of neighbors had been submitted for the record. She expects that the bank will be in this proposed location for 18-24 months.

The ATM is designed to face the sidewalk on the west side of the building very close to the sidewalk on Boston Post Road. This project was approved by the Architectural Review Board and the Zoning Board of Appeals. Only a walk-up ATM was approved, and not a drive-through. Ms. Forman said that customers may park in the driveway to use the ATM. It was noted that the ATM will be surrounded with solid walls on the inside, and they will reinforce the wall. They will also have alarm systems as required for banks, and have traditional teller areas.

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There being no further comments from Commission members, and no comments from the general public, the public hearing on this matter was then closed. Mr. Damanti then read the next agenda item:

**Business Site Plan #194-D/Special Permit, Felix & Sylvia Callari, d/b/a/ BMW of Darien, 140 Ledge Road.** Proposing to construct 12 new service bays, construct a storage shed, add nine parking spaces and to perform related site development activities. The subject property is located on the north side of Ledge Road, approximately 450 feet west of its intersection with Boston Post Road, and is shown on Assessor's Map #39 as Lots #21E & #22, SB Zone.

Attorney Wilder Gleason was present with Charles Napolitano and Larry Davidoff to describe the application. He submitted a copy of the site plan to the Commission, showing the existing buildings highlighted in yellow and the proposed buildings in pink. They propose 12 more service bays which are required by BMW. The service bay area will be 32' x 106' long, covering a portion of the existing parking area. Charles Napolitano, the Director of Operations for the Callari Group, said that a Crescent Street property in Stamford was purchased to warehouse 150 to 200 cars. Customer cars are not taken to Stamford. Mr. Damanti asked whether this proposal will intensify the BMW use. Mr. Napolitano responded that it would not. It would just mean less trips in and out of the site. The greater services proposed are compelled by national BMW. They will continue to keep 40 to 50 new vehicles on site at any time.

Attorney Wilder Gleason said that the existing Darien Zoning Regulations require that at least 20% of on-site parking spaces be available for employee parking and customers. That will not change. Customer parking will need to be provided. Otherwise customers won't come to the facility. Mr. Damanti noted that some parking now occurs on the leased driveway (the upper driveway) located adjacent to Howard Johnson's. Mr. Napolitano said that such parking can and will be controlled. Mr. Gleason outlined that there are generally three parts to this application: 1) the addition of the 8 service bays to the main building and 4 service bays to the rear building; 2) a new parts delivery building; nine new parking spaces on the front, right entrance drive; and possibly a lease of land from the Town and expansion of parking. In the future they will not need or have a need for the existing quonset hut. Mr. Napolitano said that this is a two year staging program so that operations continue unaffected while the new bays are being built. Mr. Gleason said that each building has a floor drain connected to the Town sewer line.

Mr. Larry Davidoff, the construction manager, said that the floor drains and oil separators are State mandated. They are required to have a 1,000 gallon oil separator for each building. They typically get 35 gallons when they clean out each separator every 6 months. The State needs to certify that the drains are hooked up and adequate before using them.

Mr. Graham Powell of 71 Hale Lane said that he does not want deliveries at night nor have work done on any cars done at night. Mr. Gleason responded that the deliveries to the site which are now at night are only for parts, and those deliveries occur from midnight to 6:00 a.m. Mr. Napolitano confirmed that the showroom is open until 7:00 or 8:00 at night and the service area opens at 7:00 a.m. and closes generally at 5:30 p.m. with service advisors available until 7:00 p.m. Thus generally the service area is open from 7:00 a.m. to 7:00 p.m. and BMW has been operating under these hours for over five years.

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There being no other questions or comments from Commission members or the general public, this public hearing was closed at 9:40 P.M., and Mr. Damanti then read the next agenda item:

**Coastal Site Plan Review #140-A, James & Carol Ann Ditkoff, 219 Long Neck Point Road.**  
Proposing to raze the existing shed, construct a new shed and expand the existing terrace, and perform related site development activities within a regulated area. Subject property is located on the east side of Long Neck Point Road approximately 1,500 feet south of its southern intersection with Pear Tree Point Road, and is shown on Assessor's Map #61 as Lot #10-3, R-1 Zone.

Attorney Wilder Gleason was present to discuss the application. He noted that the applicant wishes to remove the existing boat house which is close to the water's edge. He said that it is not worth repairing it. They will be replacing it with a boat house that complies with the forty foot rear yard setback for this zone. The first floor of the boat house will be at elevation 17, and it will be on support piers. The VE flood elevation is 17. There will be no insulation of the proposed boat house, and it will not be habitable, and it will have no finished space. Mr. Ditkoff confirmed that boats and boat gear are currently stored in the existing boat house.

Mr. Gleason mentioned that this is a unique open space parcel. He submitted a copy of the Declaration. He added that this Declaration allows this type of boat house building to be placed within the Open Space. The building will be 21' x 12' in size. There being no comments from Commission members, and no comments from the general public, the public hearing on this matter was then closed.

Mr. Damanti then read the next agenda item:

**Land Filling & Regrading Application #150, Brian & Mercedes Stobbie, 1 Salt Box Lane.**  
Proposing to replace and relocate existing driveway with a new asphalt driveway to the north, and perform related site development activities. Subject property is located on the west side of Salt Box Lane, at the northwest corner formed by the intersection of Salt Box Lane and Boston Post Road, and is shown on Assessor's Map #45 as Lot #4, R-1/3

Brian Stobbie was present to discuss his application to perform regrading associated with the relocation of his existing driveway to be further north on Salt Box Lane. He said that a related variance was granted by the Zoning Board of Appeals in September 2005. He said that the current driveway is too close to the Boston Post Road/Salt Box Lane intersection (about twelve feet away). The new driveway will be further to the north, farther from Boston Post Road. The change in the driveway grade requires approximately 37 cubic yards of fill and excavation. The driveway will be 9.3% at its steepest point. The drainage goes into the street. There will be less impervious surface than there is under existing conditions. He has met with Anthony Taccone of the Darien Department of Public Works about this project.

There being no other questions or comments from Commission members, the Public Hearing on this matter was closed at 9:55 P.M.

## **GENERAL MEETING**

### **Business Site Plan #243, Craig Danna, 22 Heights Road, DC Zone.**

Request to install 38 foot handicap ramp per ARB approval of August 19, 2003.

Commission members then reviewed Mr. Danna's proposal to install a handicap ramp in front of the existing building at 22 Heights Road (formerly Linden Cleaners). Commission members noted that any change in tenant requires review and action by both the Zoning Board of Appeals and the Planning and Zoning Commission. They unanimously approved the plan for the new handicap ramp which had been previously approved by the ARB in 2003.

### **Approval of Minutes**

Mr. Spain made a motion to approve the November 15, 2005 General Meeting minutes as written. That motion was seconded by Mr. Bigelow, and approved by a vote of 4-0, with Mr. Conze abstaining, as he was not at that meeting.

### **Discussion and deliberation regarding closed public hearing items.**

Mr. Damanti noted the various public hearings that were closed earlier this evening. Commission members had no significant concerns with Stobbie, Salt Box Lane; Ditkoff, Long Neck Point Road; Callari/BMW, Ledge Road; Chyung, Boston Post Road; and Darien Rowayton Bank, Boston Post Road. Mr. Ginsberg will draft resolutions for the Commission's consideration in January. The Commission had concerns in general with automobile dealers delivering vehicles on the major roads in Town.

Mr. Damanti said that he would like additional time to consider issues related to the applications made by the Darien Library. All other Commission members agreed, and Mr. Ginsberg will place this item on an early January agenda for further discussion and deliberation.

### **Any Other Business**

Mr. Ginsberg noted that there were two items that he would like to present to the Commission under "Other Business"—95-97 Noroton Avenue and 165 Noroton Avenue. Commission members unanimously voted to go into other business to discuss these two items.

#### *Florist, 95-97 Noroton Avenue*

Mr. Ginsberg explained the proposal to add a front portico to the existing building. The ARB approved this on November 15. He noted that the florist is only taking a portion of the existing first floor. Commission members believed that the porch will be an improvement to the existing façade, and unanimously approved the project.

#### *Martial Arts Studio, 165 Noroton Avenue*

Commission members then reviewed a letter proposing that a martial arts studio use the space formerly occupied by Belle Cleaners at 165 Noroton Avenue. Commission members believed that the use was appropriate, but had some concerns regarding safety, as maneuvering in the front parking spaces adjacent to Noroton Avenue is difficult. This is especially an issue in this case, where children will be picked up and dropped off for classes. Mr. Ginsberg and Mr. Keating will discuss this with the potential tenant, and ask him to better orientate the use towards the rear of the

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building, and have the public access the first floor site (level with Noroton Avenue) through the basement (which is level with Heights Road).

There being no other business, the meeting was adjourned at 10:10 P.M.

Respectfully submitted,

Jeremy B. Ginsberg  
Planning & Zoning Director

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